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Via ECFS and Overnight Delivery

June 26, 2017

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: *Structure and Practices of the Video Relay Service program*, CG Docket No. 10-51:
*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with
Hearing and Speech Disabilities*, CG Docket No. 03-123, Comments of ASL Services
Holdings, LLC dba Global to Notice of Proposed Rulemaking Part III and Further Notice
of Proposed Rulemaking Sections IV.C-E and G-H

Dear Secretary Dortch:

ASL Services Holdings, LLC dba GlobalVRS ("GlobalVRS") submits to the Commission the attached
*Reply Comments of ASL Services Holdings, LLC dba Global to Notice of Proposed Rulemaking Part III
and Further Notice of Proposed Rulemaking Sections IV.C-E and G-H*, in the above-referenced matter.

Thank you for your attention to this matter. Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.

/s/ Andrew O. Isar

Andrew O. Isar

Regulatory Consultants to
ASL Services Holdings, LLC dba GlobalVRS

cc: Commissioner Legal Advisors Nicholas Degani, Amy Bender, Claude Aiken (via Email)
Karen Peltz-Strauss (via Email)
Eliot Greenwald (via Email)
Robert Aldrich (via Email)

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Structure and Practices of the Video Relay)	CG Docket No. 10-51
Service Program)	
)	
Telecommunications Relay Services and Speech-)	CG Docket No. 03-123
to-Speech Services for Individuals with Hearing)	
and Speech Disabilities)	

**REPLY COMMENTS OF ASL SERVICES HOLDINGS, LLC DBA
GLOBALVRS TO
NOTICE OF INQUIRY ON SERVICE QUALITY METRICS FOR VRS, PART III
AND FURTHER NOTICE OF PROPOSED RULEMAKING,
SECTIONS IV.C–E AND G–H**

ASL Services Holdings, LLC dba GlobalVRS (“GlobalVRS”) submits reply comments in response to comments submitted regarding the Notice of Inquiry on Service Quality Metrics for VRS (“NoI”), Part III, and Further Notice of Proposed Rulemaking (“FNPRM”), Sections IV.C, VRS Use of Enterprise and Public Videophones; IV.D, Direct Video Calling Customer Support Services; IV.E, Per call validation procedures, IV.G, Non-Service Related Inducements to Sign Up for VRS, and IV.H, Non-Compete Provisions in VRS CA Employment Contracts, of the Commission’s *Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order*, in the above-captioned proceeding.¹

¹ *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Report and Order, Notice of Inquiry* (“NoI”), *Further Notice of Proposed Rulemaking* (“FNPRM”), and *Order*, FCC 17-26 (Rel. March 23, 2017).

I. INTRODUCTION

All VRS providers with the exception of the dominant incumbent provider have shown – and the *Expert Report of Harold Furchtgott-Roth*² confirmed - that the federal telecommunications relay service fund (“Fund”) is not a competitive “market.” In light of the non-competitiveness of the Telecommunications Relay Service Program (“Program”) and continued overwhelming dominance of a single provider, the Commission should delay consideration of new performance measures until full interoperability is achieved. Further, the Commission should continue to regulate aspects of the Program that stand to perpetuate the dominant provider’s choke hold on competition including prohibition of all inducements and non-compete employment clauses.

II. ADOPTION OF ADDITIONAL PERFORMANCE MEASURES IS PREMATURE IN THE ABSENCE OF FULL INTEROPERABILITY. (NoI, Part III)

In response to the Commission’s proposal for adoption of four new performance measures to evaluate and compare performance between providers,³ GlobalVRS questioned whether the Program “has evolved to a point where even direct comparisons between providers will be meaningful.”⁴

Sorenson claims that the “market itself polices interpreting quality”⁵ noting that “in the VRS market place, providers compete *entirely* on the basis of service quality.... VRS consumers are at least as free as consumers of voice telecommunications services to ‘vote with their feet.’”⁶ Sorenson’s observations may be valid in meaningfully competitive markets but ignore that because the VRS market is not competitive, the lingering challenges presented by a lack of full

² See in particular, *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Expert Report of Harold Furchtgott-Roth* (April 2017)

³ NoI at 30.

⁴ *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Comments of ASL Services Holdings, LLC dba GlobalVRS to Notice of Inquiry on Service Quality Metrics for VRS, Part III, and Further Notice of Proposed Rulemaking, Sections IV.C-E and G-H* (May 30, 2017) [GlobalVRS Comments]

⁵ *Id. Comments of Sorenson Communications, LLC Regarding Part III and Sections IV.C-E and G-H of the Further Notice of Proposed Rulemaking* (May 30, 2017)[Sorenson Comments] at 2.

⁶ *Id.* at 8 [emphasis supplied].

interoperability between providers would inadvertently cause additional performance measures to contribute to the dominant provider's continued dominance, reflect poorly on other providers for reasons outside of their control, and ultimately undermine competition.

GlobalVRS and others have explained that proprietary equipment users, when placing calls through another provider, hold other providers at fault when experiencing lower quality video or other technical issues resulting from limited interoperability.⁷ No caller will subscribe to another default provider if there is a perception that the other provider's service is lower quality than the subscriber's current provider. Further, interfacing providers are at the mercy of equipment-based providers and must for now rely on the equipment-based provider's collaboration to resolve interoperability issues. Such reliance limits the amount of control other providers retain over this aspect of service quality pending anticipated resolution of interoperability issues through the neutral platform and SIP/RUE profile implementation. Statistical performance measure data will not take this into account and reflect poorly on the provider, further undermining the provider's ability to compete.

The intent of adopting additional performance measures as proposed should be to ensure that consumers have a meaningful basis for fairly comparing service quality equally among providers. To the extent that providers are not in full control of the service on which they are to be evaluated due to pending full interoperability, adoption of performance measures is premature. Not until full interoperability exists, should consideration be given to adoption of comparative performance measures. Otherwise such measures will skew results in favor of proprietary-equipment providers,

⁷ See e.g. *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Comments of ASL Services Holdings, LLC dba GlobalVRS in Response to Further Notice of Proposed Rulemaking* (regarding user experience with provider-supplied video relay service equipment and software, the potential represented by equipment and software innovation, and on the appropriate scope of the Interoperability Profile for Relay User Equipment)(June 12, 2017) at 3; "ultimately in GlobalVRS' experience, other provider equipment users who venture to trial GlobalVRS' service and experience interoperability issues such as lower quality video hold GlobalVRS – and not the equipment provider – directly responsible. These users are reluctant to try the Company's service again."

undermine other providers' ability to compete, tarnish other providers' reputation, and ultimately result in meaningless and confusing measures for consumers.

III. INDUCEMENTS AND NON-COMPETE PROVISIONS SHOULD BE EXPLICITLY PROHIBITED AND THEIR PROHIBITION STRICTLY ENFORCED (FNPRM)

A. Inducements Are Anti-Competitive Under Any Guise and Must be Prohibited.

GlobalVRS and others have urged the Commission to prohibit any form of inducement.⁸ Though supportive of the Commission's goal of eliminating the ability to entice customers away from default providers, Sorenson offers an innovative distinction that would enable it to continue providing inducements purportedly without doing so.⁹ Sorenson maintains that giving away equipment "integral to the provision, continuation, and enhancement of quality VRS services"¹⁰ is somehow not an "inducement" and should be allowed. Sorenson creates a distinction without a difference that is in direct conflict with its position that "providers compete entirely on the basis of service quality," noted above.

Sorenson does not indicate who is to receive such inducements or under what circumstances, suggesting motives other than to "enhance" an existing subscribers' experience. For example, a GlobalVRS subscriber reported that it had been offered an inducement to stop using GlobalVRS' services.¹¹ Far from an effort to support the enhancement of its own VRS quality, the use of an enhancement in this instance was clearly to win back a subscriber.

If Sorenson maintains that its equipment giveaways are integral to its provision of quality VRS should it should simply provide such equipment at the time of subscription or to replace antiquated equipment, and do so for all of its subscribers. rather than as *ad hoc* inducements. And if it wishes to donate equipment to lower income users, it is free to do so as a donation. Otherwise its

⁸ *GlobalVRS Comments* at page 12.

⁹ *Sorenson Comments* at page 33.

¹⁰ *Id.*

¹¹ GlobalVRS reported the offer to the Commission but no apparent action was forthcoming.

claims of providing free “service related equipment” to enhance service quality is dubious.

To suggest that providing cables and high-quality TV among other things as add-on equipment to its basic equipment is not an inducement is duplicitous. Any form of material giveaway beyond essential equipment needed to place VRS calls – and indeed any equipment that can be used for purposes outside of the provision of relay services such as high-definition TVs - is an inducement no matter how Sorenson may seek to package it.

Its so-called “service-related equipment” giveaways represent anti-competitive behavior in a non-competitive “market,” and promote subscriber reliance on proprietary equipment at a time when technology is moving toward applications-based solutions. Such giveaways constitute an inducement under any guise and stand to perpetuate Sorenson’s dominance to the detriment of other providers.

Explicit Commission prohibition of any form of inducements is the first step, but becomes meaningless unless strictly enforcement. Once prohibited, the Commission should enforce inducement prohibitions and penalize providers who disregard Commission rules. The Commission may consider, for example, withholding reimbursement associated with a subscriber’s use for three or more months when it has been found that the subscriber received an inducement from a provider for any reason. Providers that violate incentives prohibitions should risk loss of reimbursement and in no way benefit from providing inducements. Enforcement will send a clear message to providers and their subscribers, that inducements are unacceptable under any circumstances.

B. Non-Compete Provisions Have No Place in the Program, Harm Interpreters, Unfairly Preclude Access to Skilled Interpreters, and Further Secure the Dominant Incumbent’s Dominance.

It is worth noting that only the dominant incumbent provider has implemented, and seeks to maintain, non-compete provisions in its employment contracts. No other provider, including

GlobalVRS, has felt compelled to do so.¹² Clearly, the only apparent reason for Sorenson to maintain non-compete provisions is to prevent competitors from gaining access to skilled interpreters who wish to consider alternative employment, while interfering with its own employees' ability to consider alternative employment if they wish to do so. This practice has been particularly egregious as Sorenson has sought to actively recruit competitors' interpreters.^{13 14}

Sorenson offers a number of arguments in support of its use of non-compete clauses in employment contracts which simply do not apply to the TRS Program. Its argument that non-compete clauses are "pro-consumer" because they encouraging interpreter training and investment is entirely specious.¹⁵ Following Sorenson's logic, specialized providers such as GlobalVRS who employ tri-lingual interpreters and specialized DeafBlind service interpreters should be far more inclined to adopt non-compete provisions in employment agreements to protect its expensive training and investments in these highly-skilled specialized interpreters. GlobalVRS has not deemed this necessary.

Sorenson maintains that it would be discouraged from making substantial investments in the absence of non-compete provisions – that unless it can assure that its interpreters will not be able to consider alternative employment, the Company will be reluctant to make investments in interpreter training and otherwise. Yet again, it maintains that providers compete only on their ability to provide

¹² To be sure, the Registry of Interpreters for the Deaf opposes non-competes; "RID Opposes the use of non-competition agreements in VRS interpreter contracts. RID believes that such non-competes, which are typically used to protect trade secrets, are unreasonable and undermine functional equivalence by limiting the pool of qualified work... the Commission should reject non-competition agreements in VRS interpreter contracts so that functional equivalence is achieved." See *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, [The Registry of Interpreters for the Deaf, Inc. Comments to Further Notice of Proposed Rulemaking on Structure and Practices of Video Relay Service \(VRS\) Program](#) (August 9, 2013).

¹³ *GlobalVRS Comments* at page 14.

¹⁴ That Sorenson has, in GlobalVRS' experience and that of others, been able to offer exceptionally high levels of compensation to video interpreters as part of its recruitment efforts speaks to Sorenson's ability to do so by profiting from its current re-imbursement levels.

¹⁵ *Sorenson Comments* at page 35. Sorenson speaks of "recognized pro-consumer benefits of non-compete clauses" (page 38) and admonishes other parties for not concretely identifying consumer harms, despite the providers' recounting of instances where they and their interpreters have been harmed by non-compete clauses. Yet Sorenson offers no demonstration of how non-competes benefit the public beyond its generalized "investment" arguments.

quality service. This suggests that Sorenson's investment incentives may be misplaced. GlobalVRS' motivation to train and invest in its interpreters is driven by the very desire to provide the best quality service possible and create an environment that promotes loyalty, not fear.

Sorenson's non-compete clauses effectively hold interpreters hostage from considering alternative employment while their livelihoods remain entirely dependent on Sorenson. Non-compete clauses *harm* consumers by further limiting an already limited pool of talented interpreters from other employment where they are needed by the public. In GlobalVRS experience, for example, interpreters are scared to consider employment with providers that perform community video relay interpreting and VRS. Contrary to Sorenson's assertions, the threat of litigation against interpreters directly harms local communities, doctors, hospitals, colleges and others desperately needing interpreters and interpreters who desire this type of work yet fear the prospect of litigation or other forms of retaliation.¹⁶

Sorenson next raises legal arguments regarding the Commission's lack of authority to restrict non-compete clauses.¹⁷ These arguments are also misplaced. All providers voluntarily submit to Commission regulation as a condition for providing VRS under the Program. No provider is bound to any of the Commission's regulations to the extent that it seeks to provide VRS without Fund reimbursement. The Commission is squarely within its authority to impose restrictions on non-compete clauses as a condition for provider reimbursement under the Program.

Non-compete clauses have no place in the Program. As used by Sorenson, non-compete provisions limit the pool of skilled interpreters to the public and other providers, hold employees hostage to other employment opportunities if they wish to explore them, and have no demonstrated basis for protecting interpreter training and investment. The Commission should explicitly prohibit

¹⁶ Historically Sorenson interpreters could do community work for other providers. Sorenson's initiation of community work stands to preclude this practice under non-compete clauses now viewed to apply to community work as well.

¹⁷ *Sorenson Comments* at page 38.

adoption of interpreter non-compete provisions in the Program in the public interest.

IV. SORENSON’S WHITEPAPER ON PROPER INTERPRETATION OF “IN THE MOST EFFICIENT MANNER” UNDERMINES ITS OWN ARGUMENTS ON SMALLER PROVIDER “EFFICIENCY.”

Exhibit A to Sorenson’s Comments presents an expert discussion of proper interpretation of “In the most efficient Manner” under title IV of the Americans with Disabilities Act.¹⁸ The Whitepaper underscores a key point that GlobalVRS has maintained that is diametrically opposed to Sorenson’s fallacious argument that purportedly “in-efficient” providers should not continue to be subsidized by the program.¹⁹ As the Whitepaper is included in Sorenson’s Comments, GlobalVRS offers the following observations in these reply comments.

The Whitepaper’s author, Mr. Bagenstos, establishes that the Commission’s March 23, Notice of Inquiry includes in its considerations the provision of VRS “in the most efficient and cost-effective manner – even though the term ‘cost-effective’ does not appear in Title IV [of the Americans with Disabilities Act].²⁰ He concludes that,

As it moves to setting rates, the Commission should not rely on the erroneous interpretation of Title IV as a ‘cost-effective provision.’ In particular, it would violate the statute for the Commission to set rates so low that providers are unable to offer functionally equivalent service – even if, in the Commission’s view, it would be more cost-effective to do so.²¹

Mr. Bagenstos’ conclusion that if Commission sets reimbursement rates so low that providers are unable to offer functionally equivalent service – even if, in the Commission maintains it is more cost-effective to do so - is in direct contradiction to his client’s position regarding specialized provider reimbursements. In its April 24, 2017 comments, Sorenson argues that the competitive provider proposed reimbursement structure would “result in four more years of subsidization for the

¹⁸ *The Proper Interpretation of “In the Most Efficient Manner” in Title IV of the Americans with Disabilities Act*, Samuel R. Bagenstos, *Sorenson Comments Exhibit A* (May 26, 2017)[*Whitepaper*].

¹⁹ *See In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Comments of Sorenson Communications, LLC, Regarding Section IV.A-B and F of Further Notice of Proposed Rulemaking* (April 24, 2017)[*Sorenson FNPRM Comments*].

²⁰ Whitepaper at 2, footnote omitted.

²¹ *Id.* at page 3.

two least efficient providers.”²² Throughout its comments, Sorenson rails against smaller providers, maintaining that their operations are inefficient and should not be subsidized.²³ Despite the fact that Sorenson has never demonstrated that smaller providers are “inefficient” and subsidized, Sorenson conveniently ignores Mr. Bagenstos’ conclusions as they apply to specialized provider allowable cost reimbursement.

GlobalVRS has demonstrated that the costs of providing specialized Spanish and DeafBlind services contribute significantly to its cost structure. And the Fund administrator has confirmed that GlobalVRS is not being fully reimbursed for its allowable service costs. Far from subsidizing GlobalVRS’ costs, Commission reimbursement of GlobalVRS’ allowable costs should be consistent with Mr. Bagenstos’ view that the Commission should be compensating providers in for their verified allowable costs of providing *functionally equivalent* services, including DeafBlind and Spanish interpretation, without consideration of economies of scale.

V. CONCLUSION

The VRS Program is not a competitive market. Premature adoption of performance measures in the absence of full interoperability pending new reforms intended to achieve it, will inadvertently contribute to the dominant provider’s dominance. Anti-competitive incentives and non-compete employment clauses have no place in the Program, should be prohibited under the Commission’s authority to oversee the Program, and these prohibitions strictly enforced. Otherwise these practices will also perpetuate the dominant provider’s dominance. The Commission should continue to pursue practices that promote competition, and reimburse providers for their demonstrated allowable costs in providing functionally equivalent services under the considerations raised in Sorenson’s supplied Whitepaper.

[Signature on following page.]

²² *Sorenson FNPRM Comments* at page 9

²³ “[the ‘Emergent’ rate] is simply an unjustified subsidy for two providers that have not been able to attract users...” *Id.* at 50.

Respectfully submitted this 26th day of June, 2017,

ASL SERVICES HOLDINGS, LLC dba
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